

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

:

HBL SNF, LLC, d/b/a EPIC REHABILITATION
AND NURSING AT WHITE PLAINS,

: Chapter 11

: Case No. 21-22623 (SHL)

Debtor,

:

WHITE PLAINS HEALTHCARE PROPERTIES I,
LLC,

:

Plaintiff,

:

-against-

:

HBL SNF, LLC, LIZER JOZEOFVIC A/K/A LIZER
JOZOFOVIC, and MARK NEUMAN,

: Adversary Proceeding

: Case No. 21-07096 (SHL)

Defendants and Third-Party Plaintiffs,

:

-against-

:

CCC EQUITIES, LLC, PROJECT EQUITY
CONSULTING, THE CONGRESS COMPANIES,
HOWARD FENSTERMAN, WILLIAM
NICHOLSON, and METROPOLITAN
COMMERCIAL BANK

Third-Party Defendants

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**DECLARATION OF JOHN GIARDINO IN OPPOSITION TO WHITE PLAINS
HEALTHCARE PROPERTIES I, LLC'S MOTION FOR SUMMARY JUDGMENT**

I, John Giardino, declare as follows:

1. I am a partner at Michelman & Robinson LLP, special counsel for HBL SNF, LLC, (“Debtor”). I make this declaration in support of Debtor’s Supplemental Memorandum of Law in Opposition to White Plains Healthcare Properties I, LLC’s Motion for Summary Judgment and in

support of the determination that Landlord never terminated the Lease and the Lease was in effect as of November 1, 2021.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Transcript of the video conferenced examination before trial of Plaintiff White Plains Healthcare Properties I, LLC by Howard Fensterman, Esq., pursuant to Order, before Laura B. Lowenthal, a Notary Public within and for the State of New York, dated January 11, 2022.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Transcript of the video conferenced examination before trial of Plaintiff White Plains Healthcare Properties I, LLC by Bill Nicholson, pursuant to Order, before Laura B. Lowenthal, a Notary Public within and for the State of New York, dated January 12, 2022.

4. Attached hereto as Exhibit 3 is a true and correct copy of the Notice of Default sent by Alfred E. Donnellan of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, dated January 7, 2020.

5. Attached hereto as Exhibit 4 is a true and correct copy of the letter from White Plains Health Care Properties I, LLC to Security Benefit Corporation, dated July 15, 2020.

6. Attached hereto as Exhibit 5 are the true and correct copies of the Notices of Default sent by Security Benefit Corporation to White Plains Healthcare Properties I, LLC.

7. Attached hereto as Exhibit 6 is a true and correct copy of the Term Sheet Regarding White Plains Institute for Rehabilitation and Health Care Use of Proceeds From Refinance of Waterview and Salem and CCC Equities Payoffs, dated November 20, 2015.

8. Attached hereto as Exhibit 7 is a true and correct copy of the notice sent from The Congress Companies to HBL SNF, LLC, dated March 12, 2019.

9. Attached hereto as Exhibit 8 is a true and correct copy of the Letter of Intent entered into between White Plains Health Care Properties I, LLC and HBL SNF, LLC, dated November 20, 2019.

10. Attached hereto as Exhibit 9 is a true and correct copy of the Intercreditor Agreement between CNH Finance Fund I, L.P., Security Benefit Corporation, White Plains Healthcare Properties I, LLC, and HBL SNF LLC, dated May 2020.

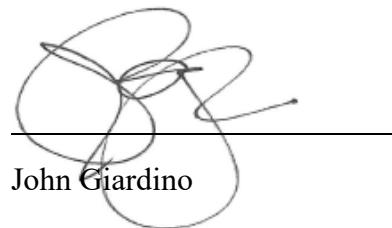
11. Attached hereto as Exhibit 10 are true and correct copies of the emails exchanged between Debtor and Landlord regarding the proposed Intercreditor Agreement, dated between April 1 and May 14, 2020.

12. Attached hereto as Exhibit 11 is a true and correct copy of the Construction Loan Agreement between White Plains Healthcare Properties I, LLC, Security Benefit Life Insurance Company, and Security Benefit Corporation, dated August 18, 2017.

13. Attached hereto as Exhibit 12 is a true and correct copy of the Complaint filed by Security Benefit, dated September 1, 2021, in the action captioned *Security Benefit Life Insurance Co., et al., v. White Plains Healthcare Properties I, LLC, et al.*, No. 62109/2021, in New York Supreme Court, Westchester County.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: February 11, 2022



John Giardino